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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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March 15, 1993

Ms. Donna R. Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Formal Comments Submitted in Response to CC Docket 92-297

Dear Ms. Searcy:

Enclosed herewith is an original and nine copies of our comments in response to the Commission's Notice of Proposed Rulemaking, CC Docket 92-297.

I have also enclosed a duplicate of this letter and three additional copies of our Comments. Please file stamp the three additional copies of our comments and the duplicate of this letter and return them for our files. A self-addressed, stamped envelope has been provided for your use.

Sincerely,

Michael B. Wigen
President

Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC FILED

In the Matters of)	
)	
Rulemaking to Amend Part 1 and Part 21)	CC Docket No. 92-297
of the Commission's Rules to Redesignate)	
the 27.5 - 29.5 Frequency Band and)	RM-7872; RM-7722
to Establish Rules and Policies for)	
Local Multipoint Distribution Service;)	
)	
Applications for Waiver of the)	
Commission's Common Carrier Point-to-)	
Point Microwave Radio Service Rules;)	
)	
Suite 12 Group Petition for Pioneer's)	PP-22
Preference)	
)	
University of Texas - Pan)	
American Petition for Reconsideration)	
of Pioneer's Preference Request Denial)	

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS

M3 Illinois Telecommunications Corp. (M3ITC) hereby submits its Comments in Response to the Commission's Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, Adopted December 10, 1992 and Released January 8, 1993 (NPRM).

M3ITC commends the Commission for its proposed redesignation of the 28 GHz Band from point-to-point microwave common carrier service to Local Multipoint Distribution Service and offers the following comments:

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Spectrum Set-Aside

1. M3ITC does not believe it is in the public interest to maintain any set-aside of spectrum, either for existing MMDS operators or for non-commercial use.

2. Wireless Cable Association (WCA) advocates that MMDS operators will be at disadvantage in competing with 28 GHz licensees due to limited spectrum and channel capacity for MMDS operators. As noted by the Commission in its NPRM, MMDS has had a de facto head start to establish its technology and marketplace. In many instances, MMDS licensees voluntarily entered a market already served by wireline cable. To now complain that wireless cable operators are at a competitive disadvantage and, due to lack of spectrum, "has been a brake to their expansion into both video and two-way communications services" is not a valid argument. First and foremost, equipment manufacturers are currently developing (as was demonstrated at the WCA's July 1992 Conference) equipment capable of compressing, and therefore expanding existing channel capacity, by a factor of 6 and 10, giving the operator significant increases in channel capacity. WCA also commissioned a White Paper on Video Compression which addressed the expanded capabilities and opportunities compression will bring to the Operator.

3. Second, it appears that entrance into two-way communications services has been an MMDS operator choice predicated by financial considerations. If cable companies are making investments to expand plant capability to deliver two-way voice and data services, MMDS operators should not be granted additional spectrum to counteract the effect of cable plant investment and research and development activities.

4. The Commission has already provided a specific educational set-aside by its designation of ITFS channels. A reluctance or inability to apply for or utilize these channels previously reserved for educational

purposes should not result in the set-aside of additional channels in the 28 GHz Band.

4. The Commission should not interpret the above comments on educational set-aside to mean that 28 GHz licensees have no social responsibility to provide some level of educational programming to its subscribers. The socially-responsible licensees will provide educational programming; the Commission can either mandate minimal levels of educational programming or incorporate educational programming criteria into its general license renewal criteria.

Structure of 28 GHz Band

6. The Commission's proposal to segregate the spectrum into two bands ("A-Band" and "B-Band") will allow the competitive delivery of services to the public. M3ITC suggests the Commission also consider other broadcast technologies, such as the use of spread spectrum, to deliver services.

7. M3ITC recognizes that video distribution will be the initial service offered by many system licensees. Competing with existing technologies, such as cable and MMDS, we believe that these licensees will need the entire 1000 megahertz of spectrum allocation contemplated by the Commission to compete effectively with these established services. Creation of multiple smaller blocks will reduce the licensees' ability to provide competitive services. If one of the Commission's objectives is to provide additional competition to existing monopolistic service providers, it should allow its 28 GHz licensees the opportunity to compete effectively and use renewal license criteria to ensure development of this competition.

8. The Commission has proposed the reassignment of the 27.5 to 29.5 GHz spectrum to LMDS. As noted in its NPRM, there are several pending applications to utilize part of the "B-Band" for point-to-point satellite communication. Since these applications are pending, we

suggest the Commission consider allocation of spectrum outside of the 28 GHz Band. The inconvenience of a change in spectrum allocation to the proposed satellite service applicants would be minimal. In addition, the requirement to develop adequate coordination and sharing criteria between the satellite service and B-Band licensees would become moot. Lastly, if the Commission proposes to allow the A-Band and B-Band licensees to compete with one another, as well as existing service providers, reassignment of spectrum for satellite service would eliminate a potential competitive disadvantage to the B-Band licensee.

Technical Issues

9. The Commission recognizes that the capabilities of LMDS will evolve over time. M3ITC therefore promotes the adoption of limited technical standards and regulations at this time. As the service matures, compatibility and interconnect issues will emerge. M3ITC believes the serious providers of these services will endeavor to achieve inter-system compatibility. The Commission allowed industry to develop its own standards in cellular telephone; we believe this approach is also appropriate for LMDS. The LMDS licensees should be encouraged to work and cooperate with the appropriate technical societies and associations in establishing the technical standards for pending 28 GHz services.

Regulatory/Licensing Issues

10. Status of Licensees. The Commission suggests nominal technical regulations and standards to allow 28 GHz licensees to develop a variety of services as quickly as possible. Some of these services will be common carrier type services, while other services will be of a non-common carrier type. To facilitate development of these services, M3ITC agrees with the Commission's proposal to allow the licensee to select its status on a channel-by-channel, cell-by-cell basis. M3ITC also recommends that the Commission designate a single branch or division to manage and coordinate the common carrier/non-common carrier elections and avoid the coordination issues of MMDS.

11. Service Areas. The Commission proposes large service areas, such as Basic Trading Areas or Major Trading Areas and indicate that the cellular industry might have benefitted from larger initial licensing areas. M3ITC disagrees, and believe smaller areas, such as PMSAs, and smaller MSAs and RSAs be designated as service areas. First and foremost, PMSAs are manageable markets for smaller operators, as well as larger operators, and greater market coverage will be more attainable in a shorter period of time. Secondly, it should be noted that the Commission is currently accepting applications for Unserved Cellular Telephone Markets that licensees were unable to complete even with a five year construction permit. This is indicative of the cost of buildout of larger service areas. We believe that LMDS will be successful and buildout expedited if the markets are smaller in nature. Conversely, the larger the service area, the greater the capital deployment and certain areas would not receive service for several years (If at all, since by adopting a percentage market coverage for the larger metropolitan areas, outlying areas would not have to be served. Applying the same percentage coverage to a smaller market would require coverage of more of the outlying market.). Definition of larger market areas would also serve to eliminate or disqualify the sincere applicant entrepreneurs wishing to enter the LMDS industry because of greater financial requirements.

12. Service of Minimum Areas and/or Populations. The Commission needs to define the concept of "Service", and whether that means merely providing video distribution services or the offering of many services, such as two-way voice, video and data services, teleconferencing, etc. If the Commission defines video distribution as the mandatory service with other telecommunications services ancillary to video distribution, then it should consider a staged buildout requirement such as Interactive Video and Data Services: ten (10) percent, thirty (30) percent and fifty (50) percent by the end of construction permit years one, three and five, respectively, with similar coverage increments up to ninety (90) percent in year nine. This staged buildout will more likely be met (and exceeded) if the market service areas are smaller in nature.

This approach allows the Commission to set minimum construction and system buildout requirements; we recognize that market forces will probably determine a greater rate of system construction and market buildout.

13. The Commission should endeavor to address a licensee's inability to complete buildout of a market and prevent future "LMDS Unserved Market Area" application filings. The Commission might allow the licensee to lease potential unserved areas to another service provider to facilitate system development; however, the Commission would have to promulgate rules and regulations to prevent abuse by an insincere licensee.

14. Cross-Ownership. M3ITC believes that the Commission should adopt cross-ownership restrictions for the 28 GHz service. The Commission, in its NPRM (Paragraph 16), recognizes that 28 GHz provides "... additional competition to franchised cable companies. A new source of competition for franchised cable companies, wireless cable companies, and other video service providers furthers [the Commission's] goal ..."

15. M3ITC, as an applicant, is interested in providing a competitive, alternative source for video programming and other telecommunications services. We hope the Commission will continue to promote competition in the marketplace. The Commission recognizes that LMDS will be a new source of competition. The Commission must adopt cross-ownership restrictions if it is to maintain this new source of competition.

16. It should be noted that cable companies are proposing to provide telephony and other telecommunications services through existing or future plant. Telephone companies are acquiring interests in cable television companies and have been authorized to provide "video dialtone" services provided they meet fiber optic plant expansion.

17. The Commission comments several times in its NPRM that 28 GHz presents a viable competitive alternative to existing providers of video distribution, two-way voice, video and data services. Failure to adopt cross-ownership restrictions may result in the following:

1) Cable companies will control both hard wire delivery of video programming and wireless broadcast of video programming. Cable companies have not been able to provide existing hard wire video programming on a competitive basis. This became such a great problem that Congress is attempting to control perceived abuses through the Cable TV Consumer Protection and Competition Act of 1992, P.L. 102-385. Allowing the Cable companies to own a second delivery system, which might otherwise provide healthy competition to wireline services, would not be in the best interests of the public.

2) Telephone companies currently provide all forms of telephony, including video teleconferencing. Telephone companies have also been granted the authority to deliver video services, provided they meet certain plant expansion criteria. If the telephone companies are allowed to provide 28 GHz services which compete with existing capabilities and authorizations, there is less likelihood that these services will be provided on a competitive basis. Additionally, if granted alternative delivery capability, the telephone companies may not develop the "fiber optic telecommunications highway" envisioned by the Commission. Allowing the telephone companies to own a second delivery system which might otherwise provide healthy competition to its telecommunications and video dialtone services would not be in the best interests of the public.

18. The Commission should also consider cross-ownership bans for MMDS and 28 GHz licensees serving the same market areas. As noted earlier, WCA states that MMDS operators have an interest in providing two-way telecommunications services. However, with the proper

investment, current MMDS operators can utilize channel compression and provide these services with existing assigned spectrum.

19. Selection from among Mutually Exclusive Applicants. The Commission proposes to use random selection or competitive bidding. M3ITC believes the random selection process to be most equitable to the innovative entrepreneur. Competitive bidding would serve to eliminate all but the largest applicants; the smaller entrepreneurs will not be able to compete on an equal basis with the larger applicants. If competitive bidding is employed, the Commission must establish a method to allow all sincere applicants to have an equal opportunity to participate in the license award process.

20. Preferences. The Communications Act requires the Commission to utilize diversity and minority preferences when awarding mass media licenses. As noted in Paragraph 12, because the concept of "Service" has not been clearly defined, LMDS may not be a form of mass media. If the Commission envisions licensees to provide cellular-type communications, two-way interactive communications, etc., then the service may not be a "media of mass communication." The Commission did not grant diversity and minority preferences to applicants for cellular licenses and IVDS licenses.

21. The uniqueness of the 28 GHz Band is its ability to provide for a number of "services" within a contiguous bandwidth. If the Commission adopts the view that 28 GHz is a true multi-media telecommunications "highway" capable of providing many services, then perhaps these services do not constitute a media of mass communication. If these services on whole do not constitute a form of mass media, then diversity and minority preferences would not be appropriate for LMDS.

22. Settlements. The Commission proposes to forbid any settlements among applicants for LMDS, and any alienation of interest in an application for LMDS. M3ITC concurs with this proposal and applaud

the Commission's efforts to eliminate the insincere applicants from applying for LMDS licenses.

23. License Term and Transfer of Control/Assignment. M3ITC realizes the problem before the Commission to ensure that only sincere applicants interested in constructing and operating LMDS systems apply for operating authorities. We therefore propose that the Commission adopt a five (5) year prohibition on system sale or transfer, to coincide with the Commission's proposed five year initial license term. Sincere applicants, interested in system development and operation, would welcome an extended ban on license transfer. M3ITC further believes that applicants with no sincere intent to develop and operate a system may find this extended ban on transfer a possible deterrent to insincere filings.

24. A five year license term, similar to the initial cellular telephone license and proposed Interactive Video and Data Service (IVDS) license, appears to be an appropriate initial licensing period; however, a ten (10) year initial term has greater merit if the Commission wishes to evaluate and introduce the many services 28 GHz technology can accommodate. An initial ten year license term would allow the licensees to recover the significant costs associated with system development and buildout; indeed, the licensees must have some reasonable expectation of capital recovery and also internally fund research and development programs to maintain continued competitiveness. Lastly, as noted in Paragraph 12, the Commission needs to define its expectations of "system" and whether its expectation is primarily the delivery of video distribution services or full exploitation of all available spectrum capabilities.

25. The Commission would be able to address extenuating circumstances, such as change in control due to death or financial difficulties, on a case-by-case basis.

26. Application Requirements. The Commission's discussion focuses in part on the need to most effectively utilize Commission resources. It suggests application requirements similar to cellular applications because the additional requirements demand vigilance and careful preparation, resulting in fewer processing delays.

27. M3ITC recommends a "post-card" type application, similar to that adopted for IVDS applications. This greatly reduces the "review burden" on the Commission's resources. This also seems to reduce the number of insincere applicants, as evidenced by the number of IVDS applications received during the initial filing windows. This approach would tend to minimize the role "application mills" might otherwise play in generating hundreds, if not thousands of insincere applications.

28. M3ITC also believes the Commission should grant the Tentative Selectee the opportunity to amend its application if any errors are discovered in its filings. The Commission's primary objective is to identify sincere applicants, not disqualify a sincere applicant due to a clerical error or unintentional omission.

29. The Commission should also adopt rules regarding challenges to the Tentative Selectee. The Commission has endeavored to discourage frivolous challenges and filings more better described as "delaying tactics" to system construction and development; M3ITC hopes these policies will also be extended to LMDS.

30. One-to-a-Market. M3ITC agrees with the Commission's position on a one application per market area, but request clarification if the limitation is one application per market or one application per A-Band and one application per B-Band.

31. M3ITC further suggests that interests in bona fide publicly-held corporations be limited to something less than one-half of one percent. We understand that these "publicly-held" interests are subject to abuse

by application mills and wish to eliminate as many insincere filings as possible.

32. Financial Showing. Although the Commission has stated that it proposes to adopt rules similar to those used for cellular applications, its proposed rules for financial showing appear far more strict than cellular.

33. The Commission predicates its financial showing commitment based in part on the responsibility each licensee would have to serve a large area. As noted in Paragraph 11, M3ITC believes the public interest would be more readily served by defining smaller market areas, and therefore a firm financial commitment would be within reach of more applicants. Conversely, if the Commission maintains its position on defining larger service areas, it effectively eliminates all but the largest applicants from even qualifying for filing status.

34. M3ITC disagrees with the Commission's proposal that applicants be required to provide service to 90% of the population within three years. See Paragraph 12 above. This is more aggressive than either cellular or IVDS, and in some respects, the LMDS technology blends attributes of each of these other technologies. We sincerely doubt that even the largest applicants would be able to meet this aggressive timetable and propose the Commission adopt a system development schedule similar to IVDS.

35. Construction Requirement. The Commission proposes a single construction benchmark: 90% population coverage within three years. As noted in Paragraph 12 and Paragraph 34, M3ITC believes this construction requirement is not reasonably achievable. We agree with the Commission that the public should be served expeditiously. However, as a sincere applicant seeking an LMDS operating authority, M3ITC and all other similarly situated applicants will need some time

and experience to develop and implement a system which maximizes both market coverage and the efficient use of equipment deployment.

36. We concur with the suggestion that the Commission be notified as soon as a portion of the system is up and operational. Rather than suspend any additional notifications until the entire system is operational, M3ITC suggests the Commission adopt the construction benchmarks as outlined in Paragraph 12 and require notification of benchmark system coverage to maintain the Construction Permit in good standing until system completion and award of a regular license.

37. Filing Date. The Commission proposes a filing scheme adopted for cellular filings (complete application, single day filing window).

38. M3ITC asks the Commission to consider a three-day filing window, as was adopted with IVDS applications. This approach will not create a burden on the Commission's resources and, if the Commission adopts a "post-card" (or Form 155 filing approach as was done for IVDS) advocated in Paragraph 27, the Commission will only need to review the Tentative Selectee(s) application(s) for conformance with the Commission's promulgated rules and regulations for LMDS.

Pending Applications

39. The Commission proposes to deny all waiver applications pending before it. M3ITC disagrees with this action. The Commission has already accepted for filing and placed on Public Notice many of these applications. The Commission has already announced the deadline for filing a Pioneer Preference. The Commission has led applicants to believe that these applications passed a cursory technical review by placing these applications on Public Notice. M3ITC believes the Commission has a duty to review each application and determine the merits of each application. At a minimum, the Commission cannot adopt a policy of arbitrarily denying applications.

40. Many of the applicants have filed timely Petitions for Reconsideration. M3ITC urges the Commission to review these timely-filed Petitions to see if there is a basis for distinguishing among any of the individual waiver requests in an equitable fashion. If the Commission then determines that there are engineering defects or application preparation defects and deficiencies in respect of the applications, it should so state, on an application by application basis.

41. M3ITC believes the Commission should allow the applicants who filed timely Petitions for Reconsideration the opportunity to amend or otherwise correct those applications previously submitted to the Commission. Some of the applicants can distinguish the sincerity of their intent, as evidenced by additional application for Pioneer's Preference and Experimental Authorizations.

42. M3ITC believes criteria does exist for the Commission to differentiate among the many waiver requests it received and processed on Public Notice. The Commission has proposed to deny these applications because they do not conform to the service concept or technical parameters proposed in the NPRM. Since these concepts and parameters are not finalized, we request the Commission to again review its position with respect to those timely-filed Petitions and if so warranted, allow these applicants to amend their applications to conform to the Commission's rules and regulations as adopted and again review the applicants' requests for waivers.

Pioneer's Preference

43. M3ITC concurs with one of the positions advocated by WCA: Viability of Suite 12's system in the marketplace. In selecting Brighton Beach as its waiver test site, Suite 12 has selected an environment (high density buildings) which relies on the reflective properties of these buildings for continued signal reflection. This is atypical of most markets.

44. Suite 12 has not demonstrated whether its technology is appropriate for the vast majority of the United States markets, and if its technology is not suited for the majority of the markets, then the general public-at-large will not benefit and the public interest will not be served.

Proposed Rule Amendments

45. The Proposed Rule Amendments promulgated by the Commission are based upon the initial conclusions of the Commission without benefit of Comments from interested parties. However, based upon the foregoing comments, M3ITC requests the Commission examine the impact of its proposed Amendments and rule changes on small business entities.

46. M3ITC believes the Eligibility Rules of 21.1001, read in conjunction with the NPRM, discriminate against small business entrepreneurs. In conjunction with the Communications Act, the Commission must allow the public to participate in the telecommunications industry in a meaningful way. M3ITC requests the Commission adopt positions more favorable to the public and small business entrepreneurs.

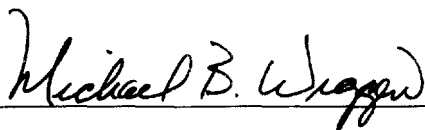
47. M3ITC further requests the Commission establish specific guidance on acceptable standards for both Eligibility and the level of detail required to be included in Application Exhibits, particularly Exhibits IV through IX. A higher level of guidance will allow applicants to better meet the application expectations set by the Commission.

48. M3ITC has submitted comments on both the Service Areas available for licensing and the Application Filing Period. Again, M3ITC requests the service areas be defined to be more conducive to small business participation and the adopted Application filing period and method more closely parallel that of the IVDS application procedure(s).

49. M3ITC requests the Commission to adopt a staged construction period, similar to IVDS and relax its rules regarding Demonstration of Financial Qualifications. Lastly, M3ITC requests the Conditions of Licenses section to 1) Reflect the staged construction period; 2) Adopt a longer licensing period to allow for the implementation of more services and associated cost recovery of that investment; and 3) Adopt a minimum five (5) year holding period after system construction prior to authorizing a license transfer.

Respectfully submitted,

M3 Illinois Telecommunications Corp.

By: 
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